

Kirkpatrick
PLM-II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-218953

DATE: June 26, 1986

MATTER OF: Thomas A. Cardoza

DIGEST:

A transferred employee may not be reimbursed a second attorney's fee for advisory and representational legal services in negotiating an escrow account to correct construction defects in the newly constructed residence he purchased at his new duty station. Payment of a second attorney's fee by the purchaser was not customary in the locality and the particular legal services rendered were related to construction of the residence rather than to the conveyance of title to the property. Reimbursement of expenses related to construction is expressly prohibited under the regulations.

In this decision we hold that Mr. Thomas A. Cardoza, an employee of the Internal Revenue Service, Southeast Region, is not entitled to reimbursement for a second attorney's fee he paid for establishing an escrow account to ensure correction of defects in the construction of his new residence.^{1/}

Background

In June of 1984, Mr. Cardoza was transferred by the Internal Revenue Service from San Francisco, California, to Atlanta, Georgia, where he contracted for the purchase of a home to be constructed at his new duty station. He paid a \$614 fee to a law firm to perform the legal work needed to close the sale of the home. Representing him, the mortgage company, and the seller, this firm conducted the title search and prepared the necessary legal documents for the closing. It is customary for the purchaser in the Atlanta

^{1/} Mr. G. J. Pellon, Authorized Certifying Officer, Internal Revenue Service, Southeast Region, requested our decision.

area to pay the closing attorney fees and, therefore, the employing office reimbursed Mr. Cardoza the \$614 fee.

Prior to closing, Mr. Cardoza found defects in the construction of the home and retained a second law firm to represent his separate interests. For a fee of \$250, that firm negotiated the establishment of an escrow account to ensure that the seller would correct the defects. Mr. Cardoza has explained that it was necessary for him to retain the second law firm to ensure correction of the defects without delaying the closing date in order not to lose his mortgage loan commitment at an advantageous rate of interest.

The Internal Revenue Service disallowed Mr. Cardoza's claim for the second attorney's fee in reliance on our holding in Philibert A. Ouellet, B-191792, September 25, 1978. In that decision we held that fees for both the lender's or seller's attorney and the employee's own attorney may be reimbursed only if it is customary in the locality of the residence for purchasers to pay both fees. The agency based its disallowance in Mr. Cardoza's case upon information obtained from the United States Department of Housing and Urban Development that it was not customary in the locality where Mr. Cardoza purchased his home for a second attorney's fee to be paid by the purchaser.

The certifying officer has suggested that we consider modifying our position in Philibert A. Ouellet, B-191792, supra, to allow reasonable fees of a second attorney who represents the employee buying a home regardless of local custom. He bases this suggestion on his belief that Mr. Cardoza acted prudently in retaining a second attorney to represent his individual interest.

Discussion

Reimbursement of the legal expenses of transferred employees in connection with the sale or purchase of a residence is authorized by 5 U.S.C. § 5724a(a)(4). This statute expressly limits entitlement to those expenses "customarily charged in the locality where the residence is located." The implementing regulations restrict legal expenses for the employee buying a home to expenses "customarily paid by a purchaser of a residence at the new official station, to the

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extent they do not exceed amounts customarily charged in the locality of the residence." Federal Travel Regulations, para. 2-6.2c, Legal and Related Expenses (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1984).

Because of this statutory and regulatory language we have necessarily limited reimbursement for a second attorney's fee to those localities where it is customary for the purchaser to pay a second attorney to represent his individual interests in the transaction. See Philibert A. Ouellet, B-191792, September 25, 1978, and Bernard N. Lowenbraun, B-205511, June 8, 1982. We have recognized that it is customary to retain a second attorney to resolve legal problems which would impede the transfer of marketable title, as in cases involving a cloud on title. See Philip G. Simonski, B-193945, April 29, 1980, and Stephen J. Petro, B-183160, November 17, 1975.

In Mr. Cardoza's case the agency has determined that it was not customary for the purchaser to incur a second attorney's fee in the locality of Mr. Cardoza's new residence. In his particular case, however, there is an additional reason why the second attorney's fee may not be reimbursed. The services provided by the second attorney were not related to the legal requirements for conveyance of title but to assure correction of construction defects by the builder of Mr. Cardoza's new residence. The Federal Travel Regulations, para. 2-6.2d(2)(f), specifically prohibit reimbursement of expenses that result from construction of a residence. In the case of an existing structure, para. 2-3.1c(13) contains a related prohibition against reimbursement of costs relating to structural alterations or remodeling. Based on the latter prohibition we have disallowed legal fees incurred incident to alteration of an employee's residence. See Douglas D. Walldorf, 57 Comp. Gen. 69 (1978), at 673-674, denying reimbursement of an attorney's fee for arranging sewer line corrections and alterations.

Since the \$250 fee for the services of a second attorney was incurred by Mr. Cardoza to assure correction of

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construction defects it must be disallowed as an expense that results from construction of his residence.

Since reimbursement is prohibited by the travel regulations and would be contrary to our decisions, we agree with the disallowance of the claim.

for Milton J. Jordan
Comptroller General
of the United States